

31A-27a-606 Special provisions for third party claims.

- (1) Whenever a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator on or before the last day for filing claims.
- (2) Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation.
- (3)
 - (a) The liquidator may make recommendations to the receivership court for the allowance of an insured's claim after consideration of:
 - (i) the probable outcome of any pending action against the insured on which the claim is based;
 - (ii) the probable damages recoverable in the action; and
 - (iii) the probable costs and expenses of defense.
 - (b) After allowance by the receivership court, the liquidator shall withhold any distribution payable on the claim, pending the outcome of litigation and negotiation between the insured and the third party.
 - (c) The liquidator may reconsider the claim as provided in Subsection 31A-27a-603(10).
 - (d) As a claim against the insured is settled or barred, the insured or third party, as appropriate, shall be paid, from the amount withheld, the same percentage distribution as is paid on other claims of like priority, on the basis of the lesser of:
 - (i) the amount actually due from the insured by action or paid by agreement plus the reasonable costs and expense of defense; or
 - (ii) the amount allowed on the claim by the receivership court.
 - (e) After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed property of the insurer.
- (4)
 - (a) If several claims founded upon one policy are timely filed, whether by third parties or as claims by the insured under this section, and the aggregate amount of the timely filed allowed claims exceeds the aggregate policy limits, the liquidator may:
 - (i) apportion the policy limits ratably among the timely filed allowed claims; or
 - (ii) give notice to the insured, known third parties, and affected guaranty associations that the aggregate policy limits have been exceeded.
 - (b) Thirty days after the day on which the liquidator's notice is given under this Subsection (4):
 - (i) no further amounts shall be allowed;
 - (ii) the policy limits shall be apportioned ratably among the timely filed allowed claims; and
 - (iii) any additional claims shall be rejected.
 - (c) A claim by the insured shall be evaluated as in Subsection (3). If an insured's claim is subsequently reduced under Subsection (3), the amount freed shall be apportioned ratably among the claims that have been reduced under this Subsection (4).
- (5) A claim may not be allowed under this section to the extent the claim is covered by a guaranty association.
- (6) A claimant may withdraw a proof of claim with the liquidator's approval. The liquidator may approve the withdrawal:
 - (a) after giving notice of the withdrawal to the insured; and
 - (b) only upon a showing of good cause.
- (7) The filing of a proof of claim in connection with a claim against an insured shall have the following effect on the rights of the claimant and the insured:
 - (a) By filing a proof of claim, a claimant:
 - (i) waives any right to pursue the personal assets of the insured with respect to the claim, to the extent of the coverage or policy limits provided by the insurer; and

- (ii) except as provided in this section, agrees that, to the extent of the coverage or policy limits provided by the insurer, the claimant shall seek satisfaction of the claim against the insured solely from:
 - (A) distributions paid by the liquidator on the claim; and
 - (B) any payments that an affected guaranty association may pay on account of the claim.
- (b) The waiver provided under this section:
 - (i) is conditioned upon the cooperation of the insured with:
 - (A) the liquidator in the defense of the claim; and
 - (B) any applicable guaranty association in defense of the claim; and
 - (ii) does not operate to:
 - (A) discharge the guaranty association from any of its responsibilities and duties;
 - (B) release the insured with respect to any claim in excess of the coverage or policy limits provided by the insurer or any other responsible party; or
 - (C) release the insured to the extent of the guaranty association's claim for reimbursement from the insured under a guaranty association statutory provision instituting a right to recover from high net worth insureds.
- (c) The waiver provided under this section is void if:
 - (i) a claimant withdraws the claimant's proof of claim under Subsection (6); or
 - (ii) the liquidator avoids insurance coverage in connection with a proof of the claim.
- (d) The liquidator shall provide, where applicable, notice of the election of remedies provision in this section on any proof of claim form it distributes that shall:
 - (i) be inserted above the claimant's signature line in typeface:
 - (A) no smaller than the typeface of the rest of the notice; and
 - (B) in no event smaller than font size 14; and
 - (ii) include a statement substantially similar to the following: "I understand by filing this claim in the estate of the insurer I am waiving any right to pursue the personal assets of the insured to the extent that there are policy limits or coverage provided by the now insolvent insurer."

Enacted by Chapter 309, 2007 General Session